

Message Text

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FM AMEMBASSY BUENOS AIRES

TO SECSTATE WASHDC IMMEDIATE 3099

LIMITED OFFICIAL USE SECTION 1 OF 2 BUENOS AIRES 6855

E. O. 11652: N/A

TAGS: CASC, CPRS, AR

SUBJECT: OLGA TALAMANTE CASE

REF: A. STATE 239889, B. STATE 233963 AND C. BA 6817

1. AS REPORTED IN REFTEL C, DCM MONTLLOR AND CONGEN HUEY MADE ROUND TRIP TO AZUL ON OCTOBER 13 AND HELD CONVERSATIONS WITH FEDERAL JUDGE DANTE IPPOLITO, MISS OLGA TALAMANTE AND DEFENSE ATTORNEY ALFREDO PEREZ ABRAHAM.

2. INTERVIEW WITH JUDGE IPPOLITO. THE JUDGE AT FIRST SEEMED RELUCTANT TO DISCUSS THE TALAMANTE CASE WHICH HE HAD TRIED, EXPLAINING THAT THE CASE WAS NO LONGER WITHIN HIS JURISDICTION. WE POINTED OUT THAT OUR INTEREST WAS IN GETTING CERTAIN CONFLICTING FACTS STRAIGHTENED OUT SO THAT THE EMBASSY WOULD KNOW HOW TO PROCEED IN THIS CASE.

3. IN REPLY TO OUR QUESTION AS TO WHETHER THE APPEAL PROCEDURE INTERFERED WITH A REQUEST FOR PAROLE, JUDGE IPPOLITO ANSWERED AFFIRMATIVELY. HE EXPLAINED THAT THERE COULD BE NO CONSIDERATION OF PAROLE UNTIL THE APPEAL PROCESS WAS COMPLETED FOR THE SIMPLE REASON THAT THE REQUEST FOR APPEAL MADE THE SENTENCE A PROVISIONAL ONE UNTIL RATIFIED, OVERTURNED OR MODIFIED BY THE APPEALS COURT. IN THE ABSENCE OF A DEFINITIVE SENTENCE,
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THERE IS YET NO DEFINITIVE SENTENCE FROM WHICH A PAROLE

CAN BE SOUGHT. WE POINTED OUT THAT THIS WORKED TO THE DISADVANTAGE OF THE DEFENDENT BECAUSE THE ACT OF APPEAL DENIED THE DEFENDANT THE POSSIBILITY OF AN EARLY RELEASE ON PAROLE. THE JUDGE SAID THIS WAS THE INEVITABLE EFFECT OF THE APPEAL. HE ALSO SAID THAT HE HAD SENT THE FILE IN THIS CASE TO THE FEDERAL COURT OF APPEALS IN THE PROVINCIAL CAPITAL OF LA PLATA AND THAT WHILE THE FILE WAS UNDER REVIEW AND IN THE HANDS OF THAT COURT, IT COULD NOT BE USED FOR A SIMULTANEOUS ACTION IN ANOTHER COURT.

4. THE JUDGE INFORMED US THAT HE HAD FORWARDED THE FILE WITH THE APPEAL TO THE COURT IN LA PLATA ON OCTOBER 9, WELL AFTER HE HAD BEEN INFORMED BY MISS TALAMANTE THAT SHE AND THE OTHER DEFENDANTS HAD DROPPED ATTORNEY PEREZ ABRAHAM AS THEIR LEGAL REPRESENTATIVE. THUS HER APPEAL AT LA PLATA WILL BE IN THE HANDS OF A PUBLIC DEFENSE ATTORNEY BY THE NAME OF ANTONIO R. SOSA LIPRANDI WHO, WITHOUT KNOWING THE NINE DEFENDANTS IN THE COMMON CASE, WILL WORK SOLELY FROM THE FILE.

5. THE AVERAGE DELAY BEFORE THE APPEALS COURT RENDERS A DECISION RUNS TO ABOUT 45 DAYS, BUT THIS MAY VARY ACCORDING TO THE WORKLOAD OF THE COURT AND THE COMPLEXITY OF THE CASE UNDER REVIEW. IT IS TO BE NOTED THAT THE FILE OF MISS TALAMANTE FORMS AN INTEGRAL PART OF A CASE INVOLVING NINE DEFENDANTS. WHILE THE APPEAL CASE OF EACH DEFENDANT IS CONSIDERED TO BE INDEPENDENT, ALL NINE CASES ARE REVIEWED AT THE SAME TIME.

6. IN DISCUSSING THE PROCEDURE TO OBTAIN THE RELEASE AND DEPARTURE FROM THE COUNTRY OF MISS TALAMANTE, THE JUDGE SAID THAT THIS WAS A MATTER OF ADMINISTRATIVE DECISION BY THE EXECUTIVE POWER, HANDLED IN THE MINISTRY OF INTERIOR. THE EXECUTIVE POWER CANNOT INTERVENE IN THE CASE AS LONG AS IT IS STILL IN THE JUDICIAL PROCESS, WHICH INCLUDES AN APPEAL. WHEN THE APPEAL DECISION IS HANDED DOWN, BE IT TO SUSTAIN THE CONVICTION OF THE LOWER COURT OR TO ACQUIT THE DEFENDANT, THE EXECUTIVE WILL PROBABLY CONTINUE TO HOLD THE PERSON UNDER THE STATE OF SIEGE. HOWEVER, IF THE MINISTRY OF INTERIOR SO DESIRES, IT MAY LIMITED OFFICIAL USE

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INVOKE THE DEPORTATION ORDER WHICH IS NOW BEING HELD IN THE IMMIGRATION DEPARTMENT OF THE MINISTRY OF INTERIOR. ALTERNATIVELY, THE DEFENDANT MAY REQUEST THE EXECUTIVE POWER ON HER OWN INITIATIVE TO BE ALLOWED TO DEPART THE COUNTRY UNDER THE CONDITIONS OF ARTICLE 23 OF THE CONSTITUTION. IN THE CASE OF MISS TALAMANTE, SHE MAY PERSONALLY WRITE TO THE MINISTER OF INTERIOR AND REQUEST EXPULSION AS HER OPTION. JUDGE IPPOLITO STATED

THAT NO ATTORNEY WAS NECESSARY IN THIS REGARD.

7. INTERVIEW WITH MISS TALAMANTE. WE NEXT VISITED MISS TALAMANTE IN THE PROVINCIAL JAIL. WE CONVERSED WITH HER IN THE OFFICE OF ONE OF THE PRISON OFFICIALS BUT HAD TO KEEP THE DOOR TO THE HALL OPEN SO THAT THE VISITORS COULD BE IN THE LINE OF SIGHT OF A MATRON. MISS TALAMANTE WAS NOT IN PRISON GARB, HAVING PRESUMABLY BEEN ALLOWED TO CHANGE BEFORE MEETING US. SHE LOOKED WELL AND WAS IN A GOOD FRAME OF MIND.

8. WE EXPLAINED THAT WE WERE IN AZUL TO TRY TO UNDERSTAND THE STATUS OF HER CASE AND TO ASSURE OURSELVES THAT SHE ALSO WAS AWARE OF WHAT WAS HAPPENING. WE TOLD HER THAT THE JUDGE HAD INFORMED US THAT AS LONG AS THE APPEAL WAS UNDER CONSIDERATION, THERE COULD BE NO ACTION ON HER CONDITIONAL RELEASE UNDER PAROLE. WE INQUIRED WHETHER SHE WAS AWARE OF THIS. SHE REPLIED IN THE AFFIRMATIVE BUT ADDED THAT SHE DID NOT KNOW IT AT THE TIME THAT SHE AND THE OTHER EIGHT DEFENDANTS HAD DECIDED TO APPEAL. SHE ALSO EXPLAINED THAT HER DECISION TO APPEAL WAS SHARED BY THE OTHER DEFENDANTS BECAUSE OF THEIR COMMON POSITION THAT THEY ARE NOT GUILTY AND THE APPEAL OFFERED THE POSSIBILITY OF ACQUITTAL. WE ASKED HER WHETHER SHE WANTED TO CONSIDER DROPPING HER APPEAL IN ORDER TO PUT IN MOTION A REQUEST FOR PAROLE, AND SHE REPLIED THAT SHE DID NOT, AND THAT SHE PREFERRED TO ACT IN CONCERT WITH THE OTHER EIGHT DEFENDANTS UNTIL THE APPEAL WAS RESOLVED. SHE SAID THAT IF AN APPEAL CONFIRMED THE SENTENCE SHE WOULD WISH TO LEAVE ARGENTINA EITHER UNDER THE EXISTING DEPORTATION ORDER OR THE OPTION OF EXPULSION UNDER ARTICLE 23. WE INDICATED TO HER THAT WE ALSO WISHED TO EXPEDITE HER DEPARTURE AND THAT WE WOULD INFORM THE AMBASSADOR OF HER WISHES.

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ACTION ARA-10

INFO OCT-01 ISO-00 SS-15 SCA-01 DHA-02 NSC-05 NSCE-00

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9. WE INQUIRED FROM MISS TALAMANTE AS TO THE REASONS FOR HER HAVING REVOKED THE POWER OF ATTORNEY THAT SHE HAD GIVEN TO DR. PEREZ ABRAHAM. SHE REPLIED THAT SHE AND THE OTHER DEFENDANTS HAD FOUND HIM TO BE INCOMPETENT. ASKED TO EXPLAIN FURTHER, SHE SAID THAT THE DEFENDANTS THOUGHT THAT THEIR CASE SHOWED THEM TO BE NOT GUILTY BUT THAT THE ATTORNEY HAD NOT PUT FORTH A VERY STRONG DEFENSE TO PROVE THEM INNOCENT.

10. MISS TALAMANTE DID NOT MAKE ANY SPECIAL REQUESTS OF US, INsofar AS HER CASE IS CONCERNED, SINCE SHE IS RESIGNED TO WAITING OUT THE TIME REQUIRED FOR THE COURT OF APPEALS TO HAND DOWN ITS DECISION. SHE DID ASK US, HOWEVER, TO SEND A MESSAGE TO HER MOTHER. WE AGREED TO DO THIS AND SHE DRAFTED ONE IN OUR PRESENCE.

11. WE ASKED MISS TALAMANTE ABOUT HER RESIDENCE STATUS IN ARGENTINA. SHE REPLIED SHE HAD TEMPORARY RESIDENCE AT THE TIME OF HER ARREST, BUT THAT IT HAD EXPIRED WHILE SHE WAS IN DETENTION. WE POINTED OUT THAT TO QUALIFY FOR PAROLE, THE JUDGE MUST BE SATISFIED THAT SHE MEETS CERTAIN CONDITIONS IMPOSED BY LAW, AMONG WHICH ARE MAINTENANCE OF RESIDENCE WITHIN A SPECIFIED AREA, AND GAINFUL EMPLOYMENT. THESE CONDITIONS WOULD BE DIFFICULT TO MEET BY A FOREIGN NATIONAL WHO IS NOT A PERMANENT RESIDENT. SHE APPEARED TO UNDERSTAND THIS.

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12. INTERVIEW WITH DEFENSE ATTORNEY PEREZ ABRAHAM. FROM THE JAIL WE WENT TO THE OFFICE OF HER FORMER DEFENSE ATTORNEY. HE TOLD US THAT HE WAS SURPRISED AT THE INEXPLICABLE ACTION TAKEN BY THE DEFENDANTS IN REVOKING HIS POWER OF ATTORNEY; THIS, HOWEVER, SHOULD IN NO WAY AFFECT THE PROGRESS OF THE APPEAL PROCEDURE NOW IN THE HANDS OF THE COURT OF APPEALS IN LA PLATA. HE SAID HE WAS GIVEN NO REASON FOR THE CONCERTED ACTION OF THE NINE DEFENDANTS BUT HE COMMENTED THAT THIS CASE HAD POLITICAL OVERTONES

BEYOND ITS JUDICIAL ASPECT.

13. WE RAISED THE QUESTION OF HIS LEGAL FEES FOR THE HANDLING OF THE CASE OF MISS TALAMANTE. THE ATTORNEY APPEARED TO BELIEVE THAT THE AMERICAN OFFICIALS WHO HAD VISITED HER RECENTLY, INCLUDING ROBERT FELDER OF THE DEPARTMENT OF STATE, HAD INDICATED THEY WOULD SOMEHOW ASSUME THE RESPONSIBILITY FOR THE PAYMENT TO HIM OF THE \$2,500 FEE. HE CLAIMED HE HAD PREVIOUSLY ALSO DISCUSSED THIS WITH ATTORNEY LEONARD WEINGLASS. WE POINTED OUT TO HIM THAT THE U.S. GOVERNMENT IS IN NO WAY OBLIGATED TO PAY THE DEFENSE ATTORNEY ANY FEE INASMUCH AS THIS IS THE RESPONSIBILITY OF THE DEFENDANT. THE ATTORNEY REPLIED THAT MISS TALAMANTE DOES NOT HAVE ANY RESOURCES IN AZUL. WE SUGGESTED THAT HE SUBMIT HIS BILL TO ATTORNEY WEINGLASS IN THE UNITED STATES FOR APPROPRIATE RESOLUTION.

14. CONCLUSIONS. IT WAS MISS TALAMANTE'S PERSONAL DECISION TO MAINTAIN HER SOLIDARITY WITH THE OTHER EIGHT CODEFENDANTS AND PURSUE THE COMMON APPEAL PROCESS IN THE KNOWLEDGE THAT THIS RESULTED IN HER CONTINUED DETENTION. SHE IS NOW AWARE OF THE CONSEQUENCES OF HER DECISION.

15. SHE NO LONGER HAS AN ATTORNEY AND DID NOT INDICATE ANY DESIRE TO OBTAIN A NEW ONE. SHE WILL RELY, ALONG WITH HER CODEFENDANTS, ON PUBLIC DEFENDER TO PURSUE HER APPEAL.

16. IF THE APPEAL RESULTS IN ACQUITTAL, SHE WILL MOST LIKELY CONTINUE TO BE DETAINED UNDER THE "STATE OF SIEGE" IN THE JURISDICTION OF THE EXECUTIVE POWER. SHE WILL THEN HAVE TO REQUEST EXPULSION FROM THE REPUBLIC, UNDER THE LIMITED OFFICIAL USE

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TERMS OF ARTICLE 23 OR FACE DEPORTATION.

17. THE DECISION OF THE APPEALS COURT MAY TAKE AS LONG AS TWO MONTHS, PERHAPS MORE, DEPENDING ON THE NUMBER OF CASES ON THE DOCKET. WHILE THE CASE IS UNDER APPEAL IT IS STILL UNDER JUDICIAL REVIEW AND NOT SUBJECT TO INTERVENTION BY THE EXECUTIVE POWER.

18. AS AN ALIEN WITHOUT RESIDENT STATUS, MISS TALAMANTE WOULD NOT APPEAR TO MEET THE CONDITIONS OF RESIDENCE AND EMPLOYMENT REQUIRED FOR PAROLE ELIGIBILITY. CONSEQUENTLY, DEPORTATION OR EXPULSION SEEM TO BE THE ONLY AVENUES OPEN TO HER IF THE CONVICTION IS UPHELD BY THE APPEALS COURT. THESE COURSES OF ACTION ARE EXCLUSIVELY WITHIN THE COMPETENCE OF THE EXECUTIVE POWER, ACTING THROUGH THE MINISTRY OF INTERIOR.

19. THE EMBASSY WILL PURSUE THIS CASE WITH THE MINISTRY OF INTERIOR WITH A VIEW TOWARD DEPORTATION OR EXPULSION AT THE TIME SHE IS RELEASED FROM JUDICIAL JURISDICTION.

20. FYI. IT IS WORTHY OF NOTE THAT JUDGE IPPOLITO TOLD US THAT HE HAD NEVER BEFORE HANDLED A CASE OF SUCH COMPLEX NATURE, WHICH INVOLVED A FOREIGNER DETAINED UNDER THE STATE OF SIEGE. SIMILAR SENTIMENTS WERE VOICED TO EMBASSY OFFICERS BY ATTORNEY THOMAS BOYWITT OF BRONS & SALAS LAW FIRM IN BUENOS AIRES, WHOM WE HAVE CONSULTED ON VARIOUS OCCASIONS. THEREFORE, THERE IS LITTLE PRECEDENT TO GUIDE US IN REPORTING ON POSSIBLE FUTURE DEVELOPMENTS IN THIS CASE. END FYI.

21. ADDENDUM. AMBASSADOR HAS JUST BEEN GIVEN APPOINTMENT FOR CALL ON MINISTER OF INTERIOR ROBLEDO AT 11:00 A.M. OCTOBER 15. WILL RAISE TALAMANTE CASE AT THAT TIME.
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